



Agenda Report

22-1299

Agenda Date: 11/15/2022

REPORT TO COUNCIL

SUBJECT

Update on Request for Proposals Related to Janitorial Work at Various City Facilities

COUNCIL PILLAR

Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND

The City contracts out janitorial services at multiple City facilities including City Hall buildings, Senior Center, Silicon Valley Power offices, Police Station, Libraries, Emergency Operations Center, several Fire Stations, and the Corp yard. Services provided by the vendor include various items such as vacuuming, mopping, restroom cleaning, window cleaning, wiping down counters, deep cleaning, and other related work efforts. Current contracts are set to expire on June 30, 2023. Staff from the Department of Public Works (DPW) and Finance Department have been working on developing a new Request for Proposals (RFP) to procure janitorial services for an initial five-year term.

The Service Employees International Union (SEIU) has reached out to staff and Council on several occasions requesting that the City include additional provisions in the upcoming Janitorial Services RFP. Specifically, SEIU has asked the City to consider including the following criteria in the RFP:

- Wage Theft Liability Waiver
- Prevailing Wage
- Collective Bargaining Agreement
- Labor Peace Agreement

Staff from Finance, DPW, City Attorney's Office (CAO) and City Manager's Office participated in several meetings with representatives from the SEIU Board to discuss these requests along with opportunities to address them. Staff has also provided updates to City Council about these discussions.

DISCUSSION

In order for staff to have a new Janitorial Services contractor under contract by July 1, 2023, it is necessary to publish the RFP in the next several months. Staff has started preparing a draft RFP that incorporates changes to address the concerns raised by SEIU; the purpose of this report is to update Council so staff can move forward with publishing the RFP.

Staff appreciates SEIU's concerns about the issues and opportunities to improve the RFP process. Staff is proposing updated RFP requirements that will address better pay and benefits, improved working conditions, a dispute resolution process, workplace harassment, and Labor Peace. Each

issue, and staff's proposed resolution is addressed below.

Wage Theft

SEIU requested that the City incorporate provisions into the Janitorial Services RFP that per California Labor Code 238.5(c) (d), require contractors to sign a Wage Theft Liability Waiver assuring that the City will not be subject to any wage claims. To address the wage theft concerns and identify companies with a history of wage theft issues, the RFP will require all companies submitting proposals be registered with the Department of Industrial Relations (DIR). This registration will include disclosing any wage claims so that type of company information will be available as part of the RFP process.

Additionally, the CAO reviewed the City's current standard contract provisions and practices. The CAO confirmed that there are already robust contractual provisions and insurance requirements in all City contracts that protect the City from being subjected to wage claims. These provisions will protect the City in lieu of a waiver. The CAO also researched the referenced Labor Code provision and noted that this section does not apply to local governments.

Prevailing Wage

The Public Works Manual published by the DIR's Office of the Labor Commissioner specifically excludes prevailing wage requirements for janitorial services. As such, the payment of prevailing wages is not required by the DIR for this contract. SEIU requested that contractors pay a prevailing wage pursuant to California Public Utilities Code (CPUC) Section 465-466. Although the CPUC Code does not apply to local governments, Staff is recommending to follow SEIU's wage request which is very close to labor rates required by other local agencies (City of San Jose, County of Santa Clara, Valley Water) under their living wage programs. Staff initially discussed following living wage provisions similar to the City of San Jose, however, SEIU was not in favor of this and preferred the CPUC prevailing wage. Staff further reviewed the request and determined that there were no additional significant costs when compared to similar living wage policies. In addition, it provided the benefit of following a CPUC approved approach instead of a different City or County living wage policy. It is estimated that this modification (or the initial living wage staff proposal) could increase costs by approximately 20 percent when compared with wages under the City's current janitorial contracts.

Collective Bargaining

SEIU requested that the City require firms to be signatory to a collective bargaining agreement with preference given to those having a dispute resolution process that covers a variety of issues including wages, benefits, working conditions and discipline. Staff will require that proposals include the firm's employee handbook or policy(s) that addresses these criteria. Information provided will be included in the proposal evaluation process.

The City's RFP will not restrict competition only to firms that are signatory to a collective bargaining agreement as this will unnecessarily restrict competition. Solicitations for City projects are open to both union and non-union firms. Furthermore, the CAO and the City's outside labor consultant concurs that the City should continue with this practice.

Labor Peace

SEIU requested that contractors have a Labor Peace Agreement with a labor organization that includes employee participation in addressing grievances, labor disputes, and working conditions.

Staff recommends addressing labor peace through the RFP process by requiring proposers to provide assurances that an environment of labor peace exists. This includes the necessary policy(s) to cover a variety of issues such as wages, benefits, working conditions and discipline. In addition, the RFP will require that all proposing firms be registered with the DIR where the disclosure of information related to wage claims, harassment, and workplace violence is required.

The City's RFP will not restrict competition only to firms that have a Labor Peace Agreement with a labor organization as this will unnecessarily restrict competition. As referenced above, solicitations for City projects are open to both union and non-union firms.

Lastly, the City's Labor Retention Ordinance will apply to this RFP, which provides for existing employees under the current agreement the opportunity to continue their employment under the new agreement even if a new vendor is selected. Staff will incorporate the submittal requirements into the RFP. The target date to issue the RFP is December 2022, allowing sufficient time for Staff to review proposals, recommend a vendor, and return to Council with a contract(s) for approval.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15378(b)(5) in that it is a governmental organization or administrative activity that will not result in direct or indirect changes in the environment.

Describe the CEQA review. If you have questions about whether CEQA applies, call CAO or reference the Style Guide.]

FISCAL IMPACT

Staff estimates that the proposed changes to the RFP could increase City costs for janitorial services by approximately 20 percent when reviewing current janitorial contracts. There are no other impacts other than staff time, or consultant time, to monitor compliance with labor requirements. Actual cost impacts will be determined through the RFP process. Once determined, actual costs will be factored into upcoming budget processes; however, because of the existing General Fund budget deficit, additional resources or expenditure/service reductions and deferrals may result to offset the potential cost of the new contract.

COORDINATION

This report has been coordinated with the Finance Department, City Attorney's Office, and the City Manager's Office

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and file the report incorporating changes discussed in this memorandum allowing Staff to move forward with issuing the RFP.

Reviewed by: Craig Mobeck, Director of Public Works
Approved by: Rajeev Batra, City Manager